HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Cr.Appeal No.6-A/2004, MP No.D-88/2009, MP No.166/2013

Date of order: 24.08.2017

Rashpal Singh and Anr. V. State through Vigilance Organization.

Coram:
Hon'ble Mr. Justice Alok Aradhe, Judge
Hon'ble Mr. B.S. Walia, Judge

Appearing counsel:

For the applicant (s) : Mr. Ashok Parihar, Advocate.
For the respondent(s) : Mr. R S Jamwal, Dy. AG.

Per Alok Aradhe,J:

The appellants were convicted vide judgment dated 31.01.2004 passed by the learned Special Judge, Anti Corruption Cases at Jammu by which the appellants have been convicted for offences under Sections 420 and 120-B, RPC and sentenced to undergo simple imprisonment for a period of five years and also four months and further they have been directed to pay fine of Rs.5000/- and Rs.1000/- each respectively.

2. This Court in Cr. Appeal No.5-A/2004, which was heard with this appeal analogously, has referred to the prosecution story in detail. Therefore, to avoid repetition and for the sake of brevity, we do not again propose to refer to the prosecution story.

3. Learned counsel for the appellants submitted that the appellants have been held entitled to amount of compensation under the award passed by the competent authority under the J&K Land Acquisition Act. It is further submitted that no amount of compensation has been paid to the appellants in respect of land admeasuring 81 kanals and 4 marlas of survey No.1035. It is further submitted that this Court by a judgment passed today in Cr. Appeal No.5-A/2004 and Cr. Appeal Nol.4-A/2004 has already acquitted

the appellants in the aforesaid appeals and the Trial Court itself has acquitted co accused persons namely Chain Singh, Keshav Chand, Ghulam Nabi Malik, Vijay Kumar, Fazal ud Din and Uttam Chand whereas accused Khazan Chand, Krishan Singh and Jagat Singh have died. The prosecution has failed to prove the offence against the appellants.

4. The appellants are admittedly the beneficiaries and the prosecution story against them is that they entered into conspiracy with the co accused persons and got their name mutated in the revenue records fraudulently and thereafter lodged a claim for compensation with the authorities in respect of the land which was acquired by the Army authorities. It is also the case of the prosecution that the appellants filed a suit under Section 32 of the J&K Land Revenue Act and got an order in their favour to the effect that they have proprietary rights in respect of the land which in fact had escheated in favour of the State Government.

5. In the instant case, the appellants were held entitled of amount of compensation by the competent authority under an award passed under the provisions of J&K Land Acquisition Act. There is no material on record to show that the aforesaid award was either set aside or was challenged before a higher forum. In other words, the entitlement of the appellants to receive the amount of compensation has neither been disputed nor any material has been placed on record to prove disentitlement of the appellants. Besides that, it is pertinent to mention here that co accused namely Chain Singh, Keshav Chand, Ghulam Nabi Malik, Vijay Kumar, Fazal ud Din and Uttam Chand have already been acquitted by the Trial Court itself.. This Court by a detailed judgment passed today in Cr. Appeal No.5-A/2004 has already acquitted the co accused Ved Prakash whereas vide judgment passed today in Cr. Appeal No.4-A/2004, the co-accused deceased Khazan Chand has also been

acquitted. Therefore, the prosecution has failed to prove the offence of criminal conspiracy as well as the offence under Section 420 of the RPC against the appellants. There is no material on record to prove the ingredients of offence under Section 420 of the RPC. The aforesaid aspect of the matter has not been appreciated by the Trial Court.

6. In the result, the impugned judgment dated 31.01.2004 in so far as it pertains to the appellants is hereby quashed and set aside. In the result, the appeal is allowed.

(B.S. Walia) **(Alok Aradhe)**
Judge **Judge**

Jammu:
24.08.2017
Raj Kumar